

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

05-CR-0116-C-01
07-C-533-C

v.

LEAVIE SCOTT,

Defendant.

Defendant Leavie Scott has filed a timely motion pursuant to 28 U.S.C. § 2255, seeking postconviction relief. He contends that he was sentenced unconstitutionally because he was deprived of an opportunity of a meaningful allocution and his counsel was ineffective.

This court can entertain only defendant's second claim. This is because the court of appeals considered his first claim when he raised it on direct appeal. That court held that although it was error to deny defendant an opportunity for allocution, it was not plain error and did not result in the imposition of a sentence longer than the one defendant would have received had the error not occurred. It is understandable that defendant would want to raise the claim again after the court of appeals decided in United States v. Luepke, 495 F.3d 443 (7th Cir. 2007), that it was plain error for the district court to announce a sentence before

giving the defendant an opportunity to be heard. However unfair it may seem to defendant that the court did not reach the same decision in his appeal as it reached in Luepke, the fact is that the court chose not to do so and its decision is final, as far as this court is concerned. A district court has no authority to reverse a decision of the court of appeals.

This court does have authority to hear defendant's contention that his counsel was constitutionally ineffective, but that claim fails on its merits. In not arguing the unconstitutionality of the drug laws, defendant's appointed counsel was not acting ineffectively but was carrying out his duty as an officer of the court not to advance clearly frivolous claims. The challenges defendant wanted counsel to make on his behalf have been raised on numerous occasions in many different courts without success. It would have been a waste of time for defendant's counsel to have raised them again in defendant's case.

ORDER

IT IS ORDERED that defendant Leavie Scott's motion for postconviction relief filed pursuant to 28 U.S.C. § 2255 is DENIED because defendant has not shown that his

sentence was imposed unconstitutionality or in violation of any law.

Entered this 22d day of October, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge